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BEFORE THE

**Federal Communications Commission**

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In the Matter of

Advanced Television Systems  
and Their Impact upon the  
Existing Television Broadcast  
Service

Federal Communications Commission  
Office of Secretary

MM Docket No. 87-268

To: The Commission

**PETITION FOR RECONSIDERATION**

Weigel Broadcasting Co. ("Weigel"), by counsel, hereby requests reconsideration of the Commission's *Sixth Report and Order* in this proceeding.<sup>1/</sup>

Weigel is the licensee of stations WCIU-TV, Channel 26, Chicago, Illinois, and WDJT-TV, Channel 58, Milwaukee, Wisconsin. In the Commission's *Sixth Report and Order*, WCIU-TV has been assigned a DTV power of 67.5 kW (Appendix B at B-18), and WDJT-TV has been assigned a DTV power of 133.7 kW (*id.* at B-44). These power levels are substantially below the DTV power levels that have been assigned to all of the other stations in the Chicago and Milwaukee markets that compete with Weigel's stations. Unless Weigel's stations are assigned DTV power levels comparable to those that have been assigned to the competing market stations, Weigel's stations will be handicapped in their efforts to compete effectively against other stations in their markets.

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<sup>1/</sup> *Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115 (rel. April 21, 1997) ("*Sixth Report and Order*").

## WCIU-TV, CHANNEL 26, CHICAGO

Weigel station WCIU-TV, Channel 26, Chicago, is an independent station. It operates with a general entertainment format. Its transmitter is located on top of the Sears Tower in Chicago. WCIU-TV competes for viewers and in other ways with each of the other stations in the Chicago market, but it competes most directly with two other Chicago market independent, general entertainment format stations -- WPWR-TV, Channel 50, and WGN-TV, Channel 9 -- and with the Chicago FOX affiliate, WFLD-TV, Channel 32. WCIU-TV competes with each of these three stations directly, head-to-head, for programming purchases, advertisers and viewers.

The Commission's DTV Table of Allotments reflects that Chicago market independent station WPWR-TV, Channel 50, has been assigned a DTV operating power of 186.5 kW -- a power level *nearly three times as high* as the 67.5 kW the Table has assigned to WCIU-TV.<sup>2/</sup> Similarly, the other two stations in the Chicago market that operate with formats quite similar to that of WCIU-TV -- WGN-TV and WFLD-TV -- have been assigned DTV operating powers of 156.8 kW and 208.7 kW, respectively.<sup>3/</sup> These power levels are, respectively, *more than twice as high and more than three times as high* as the 67.5 kW the Table has assigned to WCIU-TV. As for the other nine stations in the market, *all but one* have been assigned power levels that also exceed -- generally by a *very substantial margin* -- the 67.5 kW that has been assigned to WCIU-TV.<sup>4/</sup>

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<sup>2/</sup> *Sixth Report and Order*, Appendix B at B-19 (entry for Channel 50, Gary, Indiana). Although WPWR-TV is listed under Gary, Indiana, in the DTV Table, it operates as a Chicago market station and, like WCIU-TV, broadcasts from atop the Chicago Sears Tower.

<sup>3/</sup> *Sixth Report and Order*, Appendix B at B-18 (entries for Chicago Channels 9 and 32).

<sup>4/</sup> The Chicago ABC affiliate, WLS-TV, Channel 7, has been assigned 147.0 kW; the Chicago NBC affiliate, WMAQ-TV, Channel 5, has been assigned 191.5 kW; the Chicago Telemundo affiliate, WSNS-TV, Channel 44, has been assigned 160.7 kW; the Chicago Univision affiliate, (Continued . . .)

Weigel station WCIU-TV will be seriously hindered in its efforts to compete effectively in the Chicago market, if virtually all of the other DTV stations in the market -- including all three stations against which WCIU-TV competes most directly -- have *from two to three times the power* of Weigel station WCIU-TV. Such large disparities in power are almost certain to restrict WCIU-TV's coverage as compared to that of other market stations, and thus also to restrict WCIU-TV's viewership, advertising revenues and ability to compete in the market. Moreover, Weigel can already hear what the "sales pitch" of its competitors will be when they seek to persuade advertisers to buy time on their stations, rather than on WCIU-TV: "We have *twice the power* (or *three times the power*) of WCIU-TV. Why in the world would you ever want to advertise with them?"

The Commission has correctly recognized that DTV power levels must be set not only to achieve service replication, but also to ensure "*that all stations are able to provide DTV service competitively within their respective markets.*" *Sixth Report and Order*, ¶30 (emphasis supplied). Unless Weigel's Chicago station WCIU-TV is assigned a power level that is comparable to those of its three primary competitors and the other competing stations in the Chicago market, WCIU-TV will be at a distinct competitive disadvantage and may be unable to provide a truly competitive DTV service to the Chicago market. Weigel therefore requests that the DTV Table be modified to assign WCIU-TV a maximum permitted DTV power of 208.7 kW (the power level assigned to competing

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<sup>4/</sup> (. . .continued)

WGBO-TV, Channel 66 (listed under Joliet, Illinois, in the Table), has been assigned 128.7 kW; the Chicago Home Shopping Network station, WEHS-TV, Channel 60 (listed under Aurora, Illinois, in the Table), has been assigned 179.7 kW; the Chicago religious station WCFC-TV, Channel 38, has been assigned 206.1 kW; and the Chicago noncommercial stations WTTW, Channel 11, and WYCC, Channel 20, have been assigned 150.2 kW and 78.2 kW, respectively. *Sixth Report and Order*, Appendix B at B-18. The only exception, Chicago CBS affiliate WBBM-TV, Channel 2, has been assigned a VHF DTV channel (Channel 3), and hence will not require nearly as much power to achieve coverage comparable to its competing stations.

station WFLD-TV, Channel 32), or if this is not possible, a power level that is at least roughly comparable to those of the other, competing Chicago market stations.

#### **WDJT-TV, CHANNEL 58, MILWAUKEE**

Weigel's station WDJT-TV, Channel 58, Milwaukee, is Milwaukee's CBS Network affiliate. It competes directly with each of the affiliates of the other three major national networks in Milwaukee, as well as with other Milwaukee market stations, for viewers, advertisers and programming. According to the DTV Table, WDJT-TV has been assigned a DTV power of 133.7 kW. Milwaukee NBC affiliate WTMJ-TV, Channel 4, has been assigned the maximum possible DTV power -- 1,000 kW, which is *seven and one-half times as high* as the power assigned to CBS affiliate WDJT-TV. The Milwaukee FOX affiliate, WITI-TV, Channel 6, has also been assigned the maximum possible 1,000 kW power -- again *seven and one-half times as high* as the power level assigned to WDJT-TV. The Milwaukee ABC affiliate, WISN-TV, Channel 12, has been assigned a DTV power of 797.1 kW -- which is *six times as high* as the 133.7 kW assigned to WDJT-TV.<sup>5/</sup>

CBS affiliate WDJT-TV will be seriously hindered in its efforts to compete effectively with the three other major network affiliates in the Milwaukee market, if its DTV power level remains *six to eight times smaller* than the power levels assigned to the competing network affiliates in the market. It would clearly be inequitable -- and also contrary to the public interest -- to require the CBS affiliate in Milwaukee to compete against the Milwaukee ABC, NBC and FOX affiliates with roughly *one seventh* of the DTV power that is available to each of the other competing network

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<sup>5/</sup> *Sixth Report and Order*, Appendix B at B-44. In addition, Milwaukee independent station WVTV, Channel 18, against which WDJT-TV must also compete for advertisers, viewers and programming, has been assigned a DTV power of 487.5 kW -- which is nearly *four times as high* as the power level assigned to CBS affiliate WDJT-TV.

affiliates. Such a handicap could seriously impede free and fair DTV competition among the Milwaukee market network affiliates, and could also place significant limits on the areas within which CBS Network DTV programming will be available for the people of Milwaukee -- the nation's thirty-first market. Weigel therefore requests that the DTV Table be modified to assign to WDJT-TV a maximum permitted DTV power of 1,000 kW -- the power that has been assigned to both the NBC and the FOX affiliates in the Milwaukee market, or if this is not possible, a power level that is at least roughly comparable to the power levels awarded to the other three network affiliates in the Milwaukee market.

### **CONCLUSION**

Weigel does not know whether the as yet unreleased DTV interference standards (OET Bulletin No. 69) will allow for a future increase in the powers currently assigned by the DTV Table to stations WCIU-TV and WDJT-TV. Whether or not such an opportunity for a future power increase should materialize, however, it is inequitable and contrary to the public interest for the DTV Table to assign to WCIU-TV and to WDJT-TV the comparatively minimal power levels currently specified in the Table. Those power levels are *several orders of magnitude smaller* than the power levels that have been awarded to all of the competing stations in the Chicago and Milwaukee markets. In the interests of simple equity, fair play and a level competitive playing field, the Commission should act now to significantly increase the power levels assigned by the Table to WCIU-TV and to WDJT-TV. Without such action, these stations could be harmed, perhaps quite seriously, and their ability to compete effectively in their markets could be significantly reduced, a circumstance that will harm not only the stations themselves, but also the public at large.

For the foregoing reasons, Weigel respectfully requests that the DTV Table be revised to assign to Chicago station WCIU-TV, Channel 26, a maximum permitted DTV power level of 208.7 kW, or a roughly comparable maximum permitted power; and to assign to Milwaukee station WDJT-TV, Channel 58, a maximum permitted DTV power level of 1,000 kW, or a roughly comparable maximum permitted power. In the event that the Commission determines that such power levels cannot be assigned to WCIU-TV and WDJT-TV, Weigel requests that the Commission increase the assigned power levels of these stations by the largest amount possible and also provide a full explanation detailing why these stations cannot be assigned a power level that is at least roughly comparable to the power levels that have been assigned to all of their competitors.

Respectfully submitted

WEIGEL BROADCASTING CO.

By: 

J. Brian DeBoice

COHN AND MARKS

Suite 600

1333 New Hampshire Ave., N.W.

Washington, DC 20036

(202) 293-3860

Its Attorneys

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